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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,426	02/10/2004	Bernard Beasley	6.30.3262 US	9977

7590 06/20/2006  
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CANADA

EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 06/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/774,426	BEASLEY, BERNARD	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gary E. Elkins	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following each lack antecedent basis in the claims: claim 1, line 2, "said articles", claim 6, "said primary container", claim 8, "each upstanding edge" and claim 9, line 3, "said device". With respect to claim 6, if the intended dependency is claim 2 rather than claim 1, it is unclear which of plurality of primary containers is being referred to.

In claim 1, line 5, "that" is unclear with respect to what is referred to.

In claim 1, lines 5 and 6 are unclear with respect to what is being defined as "having at one end...".

In claim 1, line 6, "and at another end a primary container ridge member" is unclear, i.e. at another end of what?

In claim 2, lines 5-7 are unclear for the same reasons as set forth with respect to claim 1 above.

In claim 4, last line, "such primary container" is unclear with respect to what "such" is referring to and with respect to claim 4/1, the phrase is unclear since claim 1 defines articles rather than primary containers. With respect to claim 4/2, the phrase is unclear since claim 2 defines a plurality of primary containers, i.e. which of the plurality is being referred to?

Claim 5 is unclear with respect to what distance in the claimed is being referred to, i.e. a distance of what?

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In claim 5, "such primary container" is unclear with respect to what primary container is being referred to and since claim 2 defines a plurality of primary containers.

Regarding claim 7, the word "means" is preceded by the word(s) "handle" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

In claim 8, "said cover member is provided with lip members one extending..." is unclear grammatically. It would appear that a comma is needed after "members".

In claim 8, "each upstanding edge" is unclear, i.e. each upstanding edge of what?

In claim 8, "each of which members" is unclear with respect to what members are being referred to by "which".

In claim 8, last line, "carton side wall" is unclear since claims 1 and 2 do not define a carton.

In claim 9, lines 5 and 6 are unclear with respect to whether the second wall is being defined as having at one end an upstanding cover member and at another end the ridge member. It would appear that the upstanding cover member and ridge member are parts of the device rather than the secondary beverage container wall.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNaughton (fig. 2 emb) in view of Johnson and Barrett et al. McNaughton discloses all structure of the claimed device except a ridge member at the inner end of the device to engage the innermost lower can and a cover member dimensioned to close the opening in a container. Johnson teaches that it is known to make a can dispenser with an inner ridge (15). It would have been obvious to make the dispenser in McNaughton with an inner ridge as taught by Johnson to facilitate sliding motion of the innermost cans in the lower portion of the container and to decrease stress against the front portion of the container during removal. Barrett et al teaches that it is known to make a dispenser with a front wall which, when positioned interiorly, forms a closure for the container. It would have been obvious to make the cover member in McNaughton with a height sufficient to close the opening as taught by Barrett et al to prevent dirt or contaminants from entering the container and to prevent damage to the endmost can during storage or when the dispenser is not in use. With respect to claim 7, as best understood in view of paragraph 1 above, the top edge of the front wall of the device in McNaughton is considered "handle means" insofar as one can pull the device outwardly by engaging the edge.

4. Claims 1-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Barrett et al. Johnson discloses all structure of the claimed device except a cover member dimensioned to close the opening in the container. Barrett et al teaches that it is known to make a dispenser with a front wall which, when positioned interiorly, forms a closure for the container. It would have been obvious to make the cover member (13) in Johnson with a height sufficient to close the opening as taught by Barrett et al to prevent dirt or contaminants from

entering the container and to prevent damage to the endmost can during storage or when the dispenser is not in use.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Barrett et al as applied to claims 1 and 2 above, and further in view of McNaughton. Modified Johnson evidences all structure of the claimed device except lip members extending from upstanding edges of the cover member. McNaughton teaches that it is known to make a dispenser with side lip members (66, 68) engaging the sides of the container when inserted and guiding the dispenser into the container. It would have been obvious to make the dispenser in Johnson with side lip members as taught by McNaughton to help guide the device into the container.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

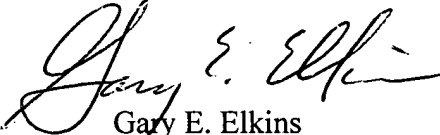
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the

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PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
14 June 2006